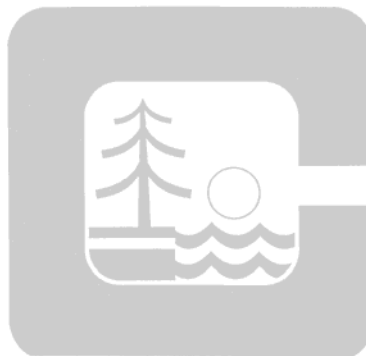


COMMONWEALTH OF MASSACHUSETTS, Mitt Romney, Governor
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS, Stephen R. Pritchard, Secretary
DIVISION OF CONSERVATION SERVICES, Robert O'Connor, Director

CONSERVATION LAND ACQUISITION PROJECTS
Massachusetts Self-Help Program
Application Package
Fiscal Year 2007

GRANT APPLICATION DEADLINE:
Tuesday, August 1, 2006 by 3PM



Division of Conservation Services
100 Cambridge St, Suite 900
Boston, MA 02114
Robert O'Connor, Director
Website: www.mass.gov/envir/dcs

Contact: Jennifer Jillson Soper
Grant Programs Supervisor
Phone: (617) 223-1745
FAX: (617) 626-1181
Email: jennifer.soper@state.ma.us

Save paper and money – please print this document using a double-sided printer setting.

This package contains the following information you will need to file an application to acquire conservation land. Remember: electronic filings will not be accepted.

- ◆ Secretary's Announcement Letter
- ◆ DCS Director's Memo to Prospective Applicants
- ◆ Conservation Land Acquisition Projects Application Step Procedures
- ◆ Conservation Application Form
- ◆ Conservation Land Acquisition Project Selection System
- ◆ Sample Municipal Vote
- ◆ Appraisal Report Guidelines
- ◆ Program Regulations

*******SAVE THE DATE*******

DCS will host a "How-To" workshop to help you prepare an application on Wednesday, May 10, 2006 from 10am to 12 noon in Boston at 100 Cambridge Street, Conference Room D, Second Floor. RSVP at (617) 626-1011, or contact Nicole.Sicard@state.ma.us.



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Mitt Romney
GOVERNOR

Kerry Healey
LIEUTENANT GOVERNOR

Stephen R. Pritchard
SECRETARY

Tel: (617) 626-1000

Fax: (617) 626-1181

March 2006

Re: FY2007 DCS Annual Grant Round

Dear Prospective Applicant:

I am pleased to announce that my office, through the Division of Conservation Services (DCS), **in anticipation of, and contingent upon, the availability of funds**, will conduct the annual Fiscal Year 2007 grant round for the Self-Help and Urban Self-Help Programs. The filing deadline is 3 p.m. on Tuesday, August 1, 2006.

Self-Help Program

The Self-Help Program provides funds to municipal conservation commissions for the purchase of conservation land. The priority for this year's Self-Help grant round will be for the protection of coastal and estuarine property; sensitive stream, river, lake and pond watersheds; and biological conservation (especially rare species habitats). Projects which fall under lands mapped in the Statewide Land Conservation Plan, and those that augment or connect to existing conservation lands, and thereby help to preserve the integrity and health of the local or regional ecosystems, will receive greater consideration for funding.

Urban Self-Help Program

The Urban Self-Help Program assists cities and urban towns with the acquisition of parkland, as well as construction of new parks and renovation of existing parks. The priorities for this year's Urban Self-Help grants include new park development on land reclaimed by dam removal or brownfield site clean-up, and projects that provide recreational opportunities to urban populations. Projects that serve to stabilize neighborhoods or are part of urban center revitalization efforts will be given special consideration as will those that demonstrate innovative stormwater control systems. Small towns may qualify for these grants where projects are designed to provide statewide or regional recreational facilities or up to a maximum grant of \$50,000 for smaller recreational projects.

In order to encourage municipalities to implement Smart Growth consistent land use practices, the Romney Administration has launched an incentive policy known as Commonwealth Capital. Discretionary grant programs include a Commonwealth Capital Score in their rating systems, and each applicant should apply directly to the Office for Commonwealth Development to receive its score. For questions on Commonwealth Capital, visit the website at <http://www.mass.gov/ocd/comcap.html>; or email commcap@massmail.state.ma.us or call (617) 626-4949.

Please contact DCS at (617) 626-1011, if you wish to learn more about these grant programs and to request an application package. More information and application forms may also be found on the DCS web page at www.mass.gov/envir/dcs. I invite each and every community to take advantage of this opportunity, and thank you for your partnership in land conservation and public outdoor recreation.

Sincerely,

A handwritten signature in black ink that reads "Stephen R. Pritchard".

Stephen Pritchard



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Mitt Romney
GOVERNOR

Kerry Healey
LIEUTENANT GOVERNOR

Stephen R. Pritchard
SECRETARY

Tel: (617) 626-1000

Fax: (617) 626-1181

MEMORANDUM

TO: Prospective Applicant
FROM: Robert O'Connor, DCS Director
SUBJECT: FY2007 DCS Annual Grant Round
DATE: March 2006

Thank you for your interest in the FY07 Annual Grant Round for the Self-Help and Urban Self-Help Programs as announced recently by Environmental Affairs Secretary Stephen Pritchard. The enclosed application package will give you a complete overview of the program you are interested in, and should be read very carefully.

Reimbursement Rates

The maximum reimbursement available from both programs is based on your community's equalized valuation per capita decile rank and ranges from 52% to 70% of the total project cost. The maximum grant award for any project has been set at \$500,000, but may be raised or lowered at the discretion of the Secretary.

Eligible Cost Policy for FY07

The Division's eligible cost policies were revised to maintain consistency with state procurement law. Be sure not to close on the property until your application has been successful and you have an executed contract with DCS. Acquisition projects must be completed and closed out by June 30, 2007.

DCS will offer a "how-to" workshop on Wednesday, May 10, 2006 from 10am to 12 noon in Boston at 100 Cambridge Street, in Conference Room D on the second floor. I strongly recommend that you attend the workshop if you plan to apply, and ask you to RSVP at (617) 626-1011. Both the workshop presentation; and answers to questions received prior to June 30, 2006 will be posted on the DCS website. Once the Open Question Period is closed, DCS staff cannot provide project specific technical assistance. Be sure to study the enclosed information, understand the program obligations, check to determine if your community and project are eligible for assistance, and contact DCS.

Grant Award Schedule:

Application Release Date:	March 31, 2006
Workshop Date:	May 10, 2006
End of Open Question Period:	June 30, 2006
Application Deadline:	August 1, 2006
Site Inspections:	August and September 2006
Award Announcement:	Anticipated announcement on or about 60 days from Application Deadline
Project Completion:	June 30, 2007

**CONSERVATION LAND ACQUISITION PROJECTS
Massachusetts Self-Help Program
APPLICATION STEP PROCEDURES**

- (1) Conservation commission or community preservation committee (the “Participant”) requests a Conservation Land Acquisition Project Application Package from the Division of Conservation Services *before purchasing land*. Confirm deadline for applications. Information on the grant round is available online at www.mass.gov/envir/dcs.
- (2) Participant files complete application with the Division of Conservation Services (DCS) before purchasing land. No electronically filed applications will be accepted. Several landholdings in a single, contiguous tract may be packaged into one application. Unrelated, separate landholdings must be submitted as individual applications. **DO NOT CLOSE ON THE PROPERTY WITHOUT AN EXECUTED CONTRACT FROM EOEA.**
- (3) Participant submits draft warrant article or Council order to the Division for review before Town Meeting or City Council vote. Municipal counsel should be consulted in drafting the warrant article, order of taking, or city council order. The draft municipal vote must cite the particular parcel to be acquired and contain authorization to seek funding under M.G.L. c. 132A, s. 11 and to enter into any contracts for the project, as well as permit the conveyance of a conservation restriction if a CR if applicable to the project.
- (4) Participant will be contacted by DCS to schedule a site inspection.
- (5) Merit point rating assigned by Division of Conservation Services followed by review by the Executive Office of Environmental Affairs Interagency Lands Committee, and the Office for Commonwealth Development. Interagency review is designed to identify statewide or regional interagency interests in projects and to review the point rating for the purpose of making final funding recommendations, with or without conditions, to the Secretary.
- (6) Application is reviewed and approved with or without special conditions, or rejected by the Secretary.
- (7) Project approval letter, Self-Help Project Agreement and State Standard Contract, and billing forms for approved projects are sent to Participants by DCS. State funds are then obligated for approved projects. Participants with unsuccessful applications will receive a brief explanation of why the project was rejected and given recommendations regarding future applications.
- (8) Municipal Funding
 - (a) Town or City votes to appropriate, transfer from available funds, expend from its Conservation Fund, or borrow an amount equal to the total cost of the project stated in the Self-Help application. A city or town may vote to borrow funds in anticipation of state or federal reimbursement prior to receiving agreement of reimbursement (M.G.L. Chapter 44, §8C); however, the borrowing cannot actually take place until state or federal approval of grant has been given. Municipal approval may also take place prior to Step 1 but Participants should insure proper compliance with Self-Help policies and procedures.
 - (b) Exclusive of borrowing situations, and if the community wishes, reimbursements may be re-appropriated back into the Participant’s Conservation Fund. Said authorization may be voted in the original article or submitted in subsequent Town Meeting or City Council votes; otherwise, reimbursements must be deposited into the General Fund as per Massachusetts General Law. Communities utilizing accounts funded by the Cape Cod Land Bank Act, other local land bank acts, or the Community Preservation Act, should consult with the Department of Revenue, Division of Local Services for guidelines.
- (9) State Procurement Law: Acquisition projects must adhere to the state's procurement laws, M.G.L. Chapter 30B. Work with your municipal procurement officer to ensure that you project conforms to the procurement law which will include advertising in the Central Register 30 days prior to closing. State procurement law also prohibits EOEA from reimbursing for the acquisition costs if the land is acquired prior to the starting date on the state standard contract for the project. **DO NOT CLOSE WITHOUT AN EXECUTED STATE STANDARD CONTRACT FROM EOEA.**
- (10) Participant makes land purchase *only* after having received an affirmative Town Meeting or City Council Vote, and an executed state standard contract from the Secretary of Environmental Affairs.
- (11) Participant files billing form with Division after purchase completed. A Self-Help acknowledgement sign must be in place at main access point before payment will made.

- (12) Billing form and documents reviewed by the Division for any changes from the project application. A corrective amendment to the project agreement will be executed and returned for signing and recording by the Participant if the project has changed.
- (13) Report to Secretary by Director on billing and request for approval.
- (14) DCS prepares invoice and submits for payment to EOEAs fiscal staff.
- (15) Payment is made. Participant receives reimbursement, typically via electronic transfer.
- (16) Participants should review DCS Post Completion requirements regarding fees, user limitations, and prohibitions against converting the conservation land to any other use, or transfer of ownership.

Due Tuesday, August 1, 2006 by 3PM

<u>For DCS Office Use Only</u>	
Self-Help #	_____
Total Project Cost:	_____
Reimbursement Rate:	_____ %
Grant Request:	_____
Approval Date:	_____

**CONSERVATION LAND ACQUISITION PROJECT: Massachusetts Self-Help Program
APPLICATION FORM –FY07 ANNUAL GRANT ROUND**

Program Regulation Reminder: IT IS UNDERSTOOD THAT ANY PROPERTY ACQUIRED WITH SELF-HELP GRANT ASSISTANCE IS OPEN TO ALL CITIZENS OF THE COMMONWEALTH, AND THAT NO MAJOR ALTERATION OF THIS PROPERTY, OR CHANGES IN THE PROPOSED USES CAN TAKE PLACE WITHOUT THE PRIOR APPROVAL OF THE SECRETARY OF THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS, AND POSSIBLY THE GENERAL COURT.

All properties for which grant assistance is provided must be open to the general public (not residents only) for appropriate recreational use and must be protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, dedicated to conservation use in accordance with M.G.L. Chapter 40, §8c.

Eligibility – communities must:

1. *Have an approved or draft Open Space and Recreation Plan on file with the Division of Conservation Services (if a draft is submitted, a condition of final payment will be to obtain DCS approval of the final report);*
 2. *Have no unresolved "parkland" conversion issues with the Executive Office of Environmental Affairs; and*
- ❖ Several landholdings in a single, contiguous tract may be packaged into one application. Unrelated, separate landholdings must be submitted as individual applications.
 - ❖ DCS will host a "How-To" workshop on Wednesday, May 10, 2006 from 10am to 12 noon in Boston at 100 Cambridge Street, Conference Room D, Second Floor. RSVP at (617) 626-1011, or contact Nicole.Sicard@state.ma.us. Both the workshop presentation and answers to questions received prior to June 30, 2006 will be posted on the DCS website.

Once the Open Question Period is closed, DCS staff cannot provide project specific technical assistance.

SUBMITTING APPLICATIONS:

All Applications are due no later than 3:00 p.m. on Tuesday, August 1, 2006. Any Application received after the deadline will be rejected. A postmark will NOT be accepted for verification of date of submission. Applications will NOT be accepted by fax machine or electronic mail. One original and two (2) copies of the Application must be submitted to:

Jennifer Soper
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Only the original submission must be provided in hard copy format and include the appraisal report(s). The copies of the Application may be submitted as one concise document (including maps) in digital format compatible with Microsoft Office 2000 or Adobe Acrobat, and no addition copies of the appraisal report(s) are required. Applicants considering delivering documents to EOE by hand are reminded that Boston is experiencing significant construction in the Government Center area and travel delays should be anticipated. Please allow plenty of time for travel into and out of the city. Applications will be accepted PRIOR to the deadline.

A complete application package contains the following documents. Each document contains important information on the application and the grant program in general. Be sure to read the entire package prior to applying for grant funding.

- | | |
|--|--|
| ◆ Secretary's Announcement Letter | ◆ Conservation Land Acquisition Project Selection System |
| ◆ DCS Director's Memo to Prospective Applicants | ◆ Sample Municipal Vote |
| ◆ Conservation Land Acquisition Projects Application Step Procedures | ◆ Appraisal Report Guidelines |
| ◆ Conservation Land Acquisition Projects Application Form | ◆ Program Regulations |

Grant Award Schedule:

Application Release Date:	March 31, 2006
Workshop Date:	May 10, 2006
End of Open Question Period:	June 30, 2006
Application Deadline:	August 1, 2006
Site Inspections:	August and September 2006
Award Announcement:	Anticipated announcement on or about 60 days from Application Deadline
Project Completion:	June 30, 2007

CONSERVATION LAND ACQUISITION PROJECT APPLICATION FORM FY2007

1. Applicant Information

Municipality: _____

Project Name: _____

Project Acreage: _____

Present Ownership Information

Name: _____

Address: _____

Assessor's Sheet Number: _____

Lot Number: _____

County: _____

Watershed: _____

2. Acquisition Details:

DCS calculates the grant award based on the total project cost based on the approved appraised value, or actual purchase price, whichever is less. The maximum grant award available is \$500,000.00. The reimbursement rate is available online.

Policy Change Now in Effect: DCS cannot reimburse for lands purchased prior to the start date on a state standard contract, in accordance with state procurement law. Therefore, DCS can no longer issue permission to proceed on an acquisition prior to project selection. The community must not purchase the land until a state standard contract is signed by both EOEA and the community.

Total Project Cost: \$ _____

Reimbursement Rate (confirmed with DCS): _____%

Grant Request: \$ _____

Note that if clear title is not available, the town may decide to acquire the property by a friendly taking (eminent domain) process to clear the title. It is best to know if there is a potential title problem as soon as possible since this can complicate the acquisition process.

Negotiated Sale:

☐ **Yes** ☐ **No**

Do you have a Purchase and Sales Agreement or Agreed Price?

☐ **Yes** ☐ **No**

If yes, Amount:

\$ _____

Is Clear Title available?

☐ **Yes** ☐ **No**

If no, is an eminent domain taking anticipated?

☐ **Yes** ☐ **No**

If yes, proposed pro tanto award amount:

\$ _____

Appraisal Report #1

Valuation: \$ _____

Appraiser: _____

Valuation Date: _____

Appraisal Report #2 – if land valued at over \$500,000

Valuation: \$ _____

Appraiser: _____

Valuation Date: _____

Attach a one page description of the proposed project budget including:

- The source of all local funding including donations, Community Preservation Act, or Cape Cod Land Bank Act funds.
- Description of the details of any donation, if applicable. Such funds should be gifted to the community and earmarked for the project.
- Description of any other sources of funding including federal, state, municipal or nonprofit organizations. List these partners and describe their contribution. Not all sources of state and federal funds are compatible with every DCS grant program.

3. Project Description

Describe purpose of acquisition and proposed use in a *one page attachment*. Use the Conservation Land Acquisition Project Rating System as an outline for the description to ensure the maximum score possible for your Project. Use this opportunity to describe only the project quality: its natural resource values and importance to the community's overall conservation goals as described in the rating system. Describe the Cover (Forest, Open, Wetland, Water, Agricultural Use); Topography (Flat, Rolling, Hilly, Mountain); and Waterfront in linear feet (Ocean, Lake, River, Stream). Be sure to include information on water resources, green infrastructure, biodiversity and resource protection, intended use of the property, and joint or cooperative efforts with other agencies or organizations. Do not comment on the community's demographic score, Commonwealth Capital Score, or assign a score to your own project.

Provide a USGS topographic map with an outline of the Project boundary. Include the location, ownership and acreage of other public or quasi-public open space abutting, or close to, the Project on the topographic map (see Recommended Attachment #2).

Access to the Property: Does Property have frontage on a street? ☐ Yes ☐ No

If *yes*, list name of street(s):

If *no*, describe how the public can access the property through adjacent landholdings. Self-Help funds are used to purchase land for conservation and public passive recreational use. Properties that do not have suitable access cannot be considered for funding.

Zoning, Present Use, and Past Use(s) of the Property. Note that if contamination is suspected, funding will be contingent upon proper mediation of the site, as determined through a Site Assessment, and the appraiser(s) should also address the issue in their evaluation.

Are there Buildings or Structures on the Property? ☐ Yes ☐ No

If *yes*, list each one estimating value and current use, as well as intended use should this project be funded. The Self-Help Program is intended to preserve undeveloped land, not to purchase buildings. If the building is not to be used for conservation purposes, it is not eligible for Self-Help funding and its value should be deleted from the subject property.

Indicate any Current or Proposed Restrictions on the Property (zoning restrictions, deed restrictions, conservation restrictions, rights-of-way, etc.).

4. Municipal Open Space and Recreation Plan and *Massachusetts Outdoors 2000!*

Describe how your Project meets the recommendations in your current Open Space and Recreation Plan and cite the page number references to your plan. If we already have a copy of your plan, there is no need to submit another copy. Comment on how the project meets the regional demand for recreation based on *Massachusetts Outdoors 2000!*: "Inferred Need for New Recreational Areas" under Chapter 5: The Regional Perspective. <http://www.mass.gov/envir/dcs/global/publications.htm>.

5. Town Meeting or City Council Approval.

Submit certified copy of the vote, or draft language. Vote must conform to sample vote language criteria, available online from DCS.

Does your project have an affirmative town meeting vote or city council approval? ☐ Yes ☐ No

If not, what is the date for the vote? _____

6. Commonwealth Capital Application

In order to encourage municipalities to implement land use practices that are consistent with Smart Growth, the Romney Administration has implemented an incentive policy known as Commonwealth Capital for discretionary grant programs. The project rating systems for the Self-Help and Urban Self-Help programs have been modified to reflect a municipality's Commonwealth Capital Score. In order to receive a Commonwealth Capital Score, municipalities must apply directly to the Office for Commonwealth Development (OCD). Communities may submit their FY06 Commonwealth Capital Score, or complete an application online at <http://www.mass.gov/ocd/comcap.html>.

Have you applied for a Commonwealth Capital Score? ☐ Yes ☐ No ☐ Submitted FY06 Score

7. Signatures

Attach community's legal authority to apply for the grant, and the Chief Executive Officer's legal authorization to execute contracts. This is a resolution, motion or similar action that has been duly adopted or passed as an official act of the community's governing body which authorizes the filing of the application, including all understandings and assurances contained therein.

By _____ Date: _____
Chief Executive Officer Type Official's Name

Conservation Commission Members (Other town agencies or boards are not eligible for Self-Help funds.)

Signature	Printed Name	Address
	<i>Chair</i>	

8. Project Manager

Attach authorization from the Chief Executive Officer identifying the individual named below who acts as the official representative of the community in connection with this application. The Project Manager will coordinate all aspects of the acquisition: from application to reimbursement should the application be successful. Ideal candidate will have access to the city or town's Chief Executive Officer, Conservation Commission, Municipal Counsel, and Municipal Treasurer.

Name: _____
Affiliation with Municipality: _____
Address at City or Town Hall: _____

Daytime Phone Number: _____
Fax Number: _____
E-mail address: _____
Date Prepared: _____

ATTACHMENTS – use this as a checklist and please label attachments.

REQUIRED

1. **Project Description and Budget Details.**
2. **Municipal Open Space and Recreation Plan**, if not already on file at DCS. Plans are approved by DCS for up to five years of eligibility in DCS grant programs. A draft plan is also acceptable if submitted on or before August 1, 2006, however the plan must be approved by DCS prior to payment of the grant award.
3. **Appraisal report(s)** as required by DCS.

STRONGLY RECOMMENDED

1. **A Cover Letter** on Conservation Commission letterhead that, at a minimum, identifies or discusses the specific parcel(s) of land to be acquired; a clear statement of the parcel(s)'s importance to the community's natural resource protection needs; any partnerships, financial or otherwise, formed to facilitate the acquisition and/or long-term protection of the parcel(s); and a detailed project schedule.
2. **USGS topographic map** showing project boundary and relationship to other public or quasi-public open space properties nearby. Show current use of adjacent lands and give ownership information if land is protected open space. If contiguous lands are under public ownership, identify agency and use. This map will serve as a locus map for site inspection by DCS staff. *This is one of the most essential attachments – please do a thorough job!*
3. **Plot plan or survey map** showing the project boundary. The project area must be shown in enough detail to be legally sufficient to identify the lands to be protected. One of the following methods must be used.
 - Registered survey plan with deed references
 - Assessor's map with block and lot number
4. Sufficient materials that will allow **MassGIS** to create an accurate digital representation of the proposed site. These materials include either 1.) a USGS topological map or copy (including the name & date of the quad) with the site accurately drawn on it, with a copy of the site plan and/or a survey plan if available **or** 2.) a printout of the digital representation of the site on a USGS topological map background and a note indicating that the digital representation of the site has been emailed to dominique.pahlavan@state.ma.us in appropriate format (Massachusetts State Plane Meters NAD1983 Datum) with a subject line that includes the words "Self-Help Program FY07 Grant Round".
5. Certified copy of affirmative **Town Meeting vote** or **City Council Order**, or draft language using the DCS sample vote language.
6. **Conservation Commission information** - Certified copy, by city or town clerk, of date of acceptance of Massachusetts General Laws Chapter 40, Section 8C establishing your municipal conservation commission; and a certified copy, by city or town clerk, of present members of the conservation commission.
7. **Draft Conservation Restriction (CR)** – if your project involves the purchase or conveyance of a CR, please complete a separate CR application and submit a draft restriction along with this application. To obtain a copy of the Conservation Restriction Handbook, visit www.state.ma.us/envir/conservation/restrictions.pdf.
8. **Commonwealth Capital Application** – submit copy of cover letter to confirm that your community has applied for this rating, or a copy of OCD's response and your score, if available. The Commonwealth Capital application, as well as additional guidance documents and information about the Commonwealth Capital Program, is available on Commonwealth Development's website at: <http://www.mass.gov/ocd/comcap.htm>.
9. **Other State Agency Review** – All applicants should request comments on their projects from the Massachusetts Natural Heritage and Endangered Species Program (MNHESP at www.state.ma.us/dfwele/dfw/nhesp/heritage), and the Massachusetts Historical Commission (MHC at www.state.ma.us/sec/mhc).

If selected, the Respondent will be required to execute the following forms in order to complete a contract:

- Self-Help Project Agreement (available online at www.mass.gov/envir/dcs).
- Commonwealth Standard Contract
- Commonwealth Standard Terms & Conditions
- Contractor Authorized Signatory Listing

Applicants are encouraged to review these forms prior to submission of an Application. With the exception of the Self-Help Project Agreement available online at www.mass.gov/envir/dcs, all other forms are available at: <http://www.mass.gov/osd>.

CONSERVATION LAND ACQUISITION PROJECTS SELECTION SYSTEM
Massachusetts Self-Help Program

In order to distribute limited grant funds among an overwhelming number of applicants, a project selection system has been developed for conservation land acquisition projects. The selection system includes an interagency review and rating of each project, and an evaluation of the applicant community's commitment to sustainable development criteria developed by the Office for Commonwealth Development. The rating system considers demographic, social, environmental and project quality factors in order to identify those projects which best protect both natural resources and public passive outdoor recreation opportunities.

Interagency Review

The Executive Office of Environmental Affairs' Interagency Lands Committee (ILC) reviews conservation land acquisition project applications to ensure project coordination with state agency programs, executive orders and environmentally sound land use policies. The Committee consists of representatives from the Departments of Conservation and Recreation, Fish and Game, and Agricultural Resources, and can include other EOEА personnel. The ILC considers each project and its impact on the statewide conservation vision articulated in *An Open Space Plan for Massachusetts: A Partnership*, and *Massachusetts Outdoors 2000! – The Statewide Comprehensive Outdoor Recreation Plan* (SCORP). DCS coordinates the interagency review of all applications and submits all comments and recommendations to the Secretary of Environmental Affairs for final funding decisions.

In reviewing applications and developing their recommendations to the Director of Conservation Services, the ILC considers:

1. Demographics

Three categories are evaluated by DCS to calculate a community's demographic score. Communities with higher Population Density, lower Median Income, and higher Percentage of Households Below Poverty Level receive higher demographic scores. (Scores are calculated by DCS; therefore, there is no need to submit any statistics or narrative on your community's behalf.)

2. Community Profile Score

Environmental Justice Community – calculated by EOEА's EJ Director.

Commonwealth Capital Score – EOEА encourages land use decisions that protect environmental quality and preserve natural resources. Unplanned growth not only threatens the environment, it also can adversely affect the timely provision of needed infrastructure, and has a tremendous fiscal impact on communities. This impact, in turn, puts future economic opportunities at risk. The Office for Commonwealth Development has developed sustainable development criteria and will evaluate and score each applicant community. Please submit a Commonwealth Capital Application for your community, available online at <http://www.mass.gov/ocd/comcap.html>, to obtain your score.

3. Project Quality

- Water Resources: frontage on the ocean or estuarine habitats; frontage on lakes, ponds, rivers; recreational utility, and protection of drinking water supplies;
- Green Infrastructure: size of the acquisition and its proximity to other protected open space;
- Multiple Uses: purpose for acquisition, in addition to public passive recreation;
- Biodiversity and Resource Protection: subject property contains resources identified by *Massachusetts Outdoors 2000!*, the Statewide Comprehensive Outdoor Recreation Plan, the Natural Heritage and Endangered Species program, Massachusetts Historical Commission, or Areas of Critical Environmental Concern. Applicants must include written comments from any of the following state agencies: the Massachusetts Natural Heritage Program Office, or the Massachusetts Historical Commission, or ACEC program as appropriate.
- Consistency with local Open Space and Recreation Plan and *Massachusetts Outdoors 2000!*.

4. Partnerships

EOEA, like any other open space protection agency or organization, must have other financial partners. Projects that involve financial contribution from more than one municipality, or from a nonprofit organization will be given higher consideration. Projects that obtain technical assistance from other organizations will also benefit in the rating system.

SELECTION NOTE: Preservation of Agricultural Land

Executive Order #193 discourages the irreversible conversion of the Commonwealth's productive agricultural land base. State Grants shall not be used to encourage the irreversible conversion of agricultural land to other uses when feasible alternatives are available. In the event that all feasible alternatives have been explored, and the conversion of suitable agricultural lands to non-agricultural use remains the only feasible alternative to protection of open space, a mitigation plan must be developed to be eligible for reimbursement under a state grant. Project which would convert any prime agricultural lands should consult with the Department Agricultural Resources at (617) 626-1700 prior to submitting an application.

RATING SYSTEM for Conservation Acquisition Projects

CATEGORY	SUB-CATEGORY	Description	Partial Points	Max
DEMOGRAPHICS	Population Density	Figures obtained from MISER and put into rank order by DCS	1 through 4	5
	Median Income	Figures obtained from MISER and put into rank order by DCS	1 through 4	5
	Percentage of Households below Poverty Level	Figures obtained from MISER and put into rank order by DCS	1 through 4	5
COMMUNITY PROFILE SCORE	Environmental Justice Community	Calculated by EOE's Environmental Justice Director	1 through 4	5
	Sustainable Development Criteria - Commonwealth Capital Score	Criteria developed by Office for Commonwealth Development and required for all "Commonwealth Capital" grant programs. Open Space and Recreation Plan, Housing Compliance, and Local Funding Initiatives among other criteria are considered (see http://www.mass.gov/ocd/comcap.html for details).	1 through 29	30
PROJECT QUALITY	Water Resources	Frontage on ocean, or estuarine habitat.	15	15
		Lake, pond, major river, water supply (surface or ground) i.e. Zone II or reservoir, regionally important wetlands (DEM 1978), cold water fishery stream	10	
		Secondary river or stream with recreation potential, frontage on small streams, small wetlands	5	
	Green Infrastructure	250+ acres of upland forest, wetland or water resources that create a hub or corridor of permanently protected land; expansion of existing hub or corridor (including those protected by APR or CR)	15	15
		Acquisitions of between 100 - 249 acres that 1.) link to other Article 97 lands or 2.) are within a Critical Ecosystem (MNHESP)	10 points	
		Acquisitions of less than 100 acres that 1.) link to other Article 97 lands or 2.) are within a Critical Ecosystem (MNHESP)	5 points	
	Multiple Uses	Water Supply Protection	4+ uses 5 pts	5
		Agricultural Use	3 uses - 4 pts	
		Passive Recreation	2 uses - 2 pts	
		Historic or Archeological Interpretation	1 use - 0 pts	
	Biodiversity and Resource Protection	Project contains resources identified by the: * Statewide Land Conservation Plan * MA Natural Heritage and Endangered Species Program * Massachusetts Historical Commission * Areas of Critical Environmental Concern Program * Five-Year Watershed Action Plans (http://www.mass.gov/envir/water/publications.htm)	5	5
		Project abuts identified resource area, or is likely to contain resources identified by the: * Statewide Land Conservation Plan * MA Natural Heritage and Endangered Species Program * Massachusetts Historical Commission * Areas of Critical Environmental Concern Program * Five-Year Watershed Action Plans http://www.mass.gov/envir/water/publications.htm	3	
	Consistency with local Open Space and Recreation Plan and <i>Massachusetts Outdoors 2000!</i>	Points awarded based project's priority in the local Open Space and Recreation Plan, and <i>Massachusetts Outdoors 2000! Chapter 5: The Regional Perspective, "Inferred Need for New Recreational Areas"</i> http://www.mass.gov/envir/dcs/global/publications.htm	1-6	6
PARTNERSHIPS	Cooperative Effort between Municipality and one or more Partner(s)	Other Sources of Funding from another Municipality or Nonprofit Organization	4	4
		*Management Plan: Technical Assistance and Signature on plan	2	
TOTAL				100

SAMPLE MUNICIPAL VOTE

Each community should draft its warrant article or city council order with the guidance of municipal counsel. The form will vary with the type of project, source of funding, etc. All should include the following elements:

- I. Authorization to expend an amount equal to the full acquisition and/or development cost of the project. All DCS grant programs are *reimbursement* programs, not match programs; therefore, the total project cost must be raised or appropriated through current tax levy or borrowed; project bills paid by the municipality and then a reimbursement request is made to DCS for the grant amount.
- II. Indication of the source of funding (Conservation Fund, Community Preservation Act Fund, general fund, borrowing, etc.). M.G.L. Chapter 44, sections 7, 8C, and 12(a) on Municipal Indebtedness, allows cities and towns to borrow in anticipation of reimbursement. It is strongly recommended that the warrant article or city council order is prepared with the advice of city/town counsel, treasurer and accountant to ensure that the appropriate section is noted in the warrant article. These sections permit the municipality to borrow in anticipation of a grant and require that a grant agreement be executed before the treasurer actually obtains the borrowed amount. This assures DCS that the municipality has 100% of the total project cost, and assures the municipality that the project need not be completed if the proposal does not receive grant assistance. For further advice, please contact the Department of Revenue, Division of Local Services at (617) 626-2300.
- III. Acquisition projects: indicate that land is being acquired either for conservation and passive outdoor recreation purposes (Chapter 40, Section 8c) or for active recreation purposes (Chapter 45, Section 3 or 14, for example) and will be in the care and control of the appropriate commission or department.
 - IV. Authorization for the conservation commission to seek reimbursement under the Self-Help Act: Chapter 132A, Section 11 and enter any necessary contracts thereto.
- V. If a taking is involved in an acquisition project, the conservation commission must, in writing, request the selectmen or city council to take the property via eminent domain.

The following is a sample vote authorizing the acquisition of conservation land using Self-Help financial assistance. This is intended only as a point of reference. **Municipal Counsel should always be consulted when drafting Town Meeting warrant articles or City Council orders.** The draft article or order should be submitted to DCS for review prior to the Town Meeting or City Council to ensure compliance with the grant program.

Sample for Self-Help Conservation Acquisition Project – Town Meeting Warrant Article

To see if the CITY/TOWN will vote to appropriate, and authorize the Treasurer with the approval of the Selectmen [describe method of appropriation and/or borrowing according to M.G.L. Chapter 44, note particularly Section 8C], to borrow the sum of \$TOTAL PROJECT COST, for the purpose of purchasing for conservation and passive recreation purposes, by eminent domain or negotiated purchase or otherwise, a certain property together with buildings thereon, known as the PROPERTY NAME consisting of XXX acres, more or less, as shown on a plan entitled "Plan of Land in MUNICIPALITY made by SURVEYING FIRM dated XX/XX/XX"; that said land be conveyed to said CITY/TOWN under the provisions of Massachusetts General Laws, Chapter 40, Section 8c, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of MUNICIPALITY, and the Conservation Commission be authorized to file on behalf of MUNICIPALITY any and all applications deemed necessary for grants and /or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, Section 11) and/or any others in any way connected with the scope of this Article, and the CITY/TOWN and the Conservation Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of MUNICIPALITY to affect said purchase.

Special Note for Acquisition Projects Funded through the Community Preservation Act

The Community Preservation Act (CPA) states that land acquired with these funds are to be bound by a permanent restriction. DCS acquisition projects meet this requirement because each project must:

1. Obtain an affirmative Town Meeting or City Council Vote stating the purpose for the acquisition (either conservation or recreation);
2. Include similar language in the deed;
3. Record a copy of the Project Agreement as an adjunct to the deed; and
4. Include a copy of the Project Agreement as an appendix to the land management plan.

These steps effectively protect the land under Article 97 of the Amendments to the State Constitution. Additionally, since DCS grant funds were used, any conversion to a non-conservation or non-recreation use requires the community to replace the converted property with land of equal monetary value, and conservation or recreational use.

However, some communities may still wish to further protect the property by conveying a conservation restriction to a conservation or recreation nonprofit organization (a “qualified holder”). Conveying a conservation restriction over “parkland” normally would trigger the formal “Article 97” disposition process. However, it is the opinion of EOEA and the Massachusetts Land Trust Coalition Attorney Referral Panel that: “If a municipality acquires property under the CPA statute, it is required to impose a restriction on the property as a matter of law and thus the imposition of the restriction should be considered part of an integrated plan for dealing with the property. Therefore, the imposition of the restriction should not be considered a “disposition” of an interest in the property within the meaning of Article 97.”¹

Points to Remember if a CR is conveyed:

1. It is preferable for the municipality to vote to impose the restriction at the same time that it votes to acquire the property, and that the purchase of the property and conveyance of the restriction be a simultaneous closing.
2. As long as a restriction is recorded **after** the recording of the deed of acquisition (even if immediately after), the unrestricted value (and therefore higher value) of the property is used for funding determinations in DCS grant programs.
3. The fact that the funding statute *requires* the restriction may mean that a party seeking a charitable contribution deduction in connection with a bargain sale of property may not be able to use the unrestricted value of the property in calculating the tax benefit.
4. The “proceeds” clause of the conservation restriction, if conveyed at no cost to the grantee, must provide that the municipality (as the fee owner) receives all of the proceeds of an extinguishment or taking, and the grantee receives none of such proceeds. In the event that the land ever is converted to non-conservation use, the municipality would still be responsible for replacing the converted property with land of equal or greater monetary value and conservation use and described in the Program Regulations, as though the land were owned in fee simple. Applicants should consult with DCS for guidance on drafting conservation restrictions for the appropriate language.

Sample Vote Language for Community Preservation Act Projects

To see if the Town [or City] will vote to raise, borrow and/or appropriate \$Total Project Cost for the acquisition by gift, negotiated purchase or eminent domain of a parcel of land of approximately ___ +/-acres owned by OWNER as described on Assessors Map ___, Parcel ___, to be managed and controlled by the Conservation Commission of the Town [or City] of XXX in accordance with Chapter 40, Section 8C for conservation and passive recreation purposes, and to meet said appropriate with funds transferred and/or borrowed in accordance with M.G.L. Chapter 293, the Community Preservation Act and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority, and that the Town Manager [or Board of Selectmen or City Council or Mayor] be authorized to file on behalf of the Town [or City] of XXX any and all applications deemed necessary under the Self-Help Act (M.G.L. Chapter 132A, Section 11) [or LWCF or USH] or any other applications for funds in any way connected with the scope of this acquisition, and the Town Manager and the Board of Selectmen [or Mayor and the City Council] and the Conservation Commission be authorized, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B or Chapter 293 Section 10 of the Acts of 1998 as amended, as may be necessary on behalf of the Town [or City] of XXX to affect said purchase. Said conservation restriction may be granted to the [Name of Grantee] or any other organization qualified and willing to hold such a restriction.

1 Attorney Greg Bialecki and the Attorney Referral Panel of the Massachusetts Land Trust Coalition – Visit the Massachusetts Land Trust Coalition website at www.massland.org, or <http://www.massland.org/pages/resources/legaladvisory3.html> for this legal advisory.

**SELF-HELP and URBAN SELF-HELP PROGRAMS
APPRAISAL REPORT GUIDELINES**

If your project involves an acquisition, the appraisal reports are absolutely critical to the success of your project. The subject project must be appraised in accordance with the Division's requirements by a qualified, independent and disinterested appraiser. Reports done for the owner, or paid for by the owner, cannot be used. The report must be submitted along with the preliminary application by the grant round application deadline. If your project is selected for funding, you should wait until DCS has certified a value based on the appraisal report before you begin formal negotiations with the owner and because the report determines the possible grant award. The appraisal used to certify a value must not be more than a year old, when measured from the effective date of the appraisal to the date the transaction is closed. Attached are the appraisal standards covering both the required documentation, as well as the type of report necessary based on the estimated value of the subject property.

1. **Type of Appraisal Report Required:** If the subject property is worth up to \$500,000, one full appraisal report is required; two are required for property worth over \$500,000. A full narrative appraisal is a comprehensive analysis, substantiated by documented market data, of the value of a property. Full appraisals must be bound, in book-fashion, in the left margin, in a durable cover with an identification of the property on the cover page. The paper must be a good grade bond of size 8 1/2"x 11". All pages must be numbered consecutively, including all exhibits, and each important heading must be shown in the Table of Contents. In short, this is not the brief estimate typically done by a lending institution when a home is refinanced.
2. **The Appraiser's Scope of Practice:** The appraiser must be licensed and/or certified by the Massachusetts Board of Registration of Real Estate Appraisers, and have the appropriate license or certification for the type of land that is appraised. In addition, the appraiser must be certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The appraiser should supply you with this professional information at your request. Often the project will require a state certified general real estate appraiser. The following is an excerpt from the state regulations for the Board of Registration of Real Estate Appraisers.

264 CMR 7.00 SCOPE OF PRACTICE

7.01: Scope of Practice

(1) State Licensed Real Estate Appraisers. State-licensed real estate appraisers may appraise non-complex one-to-four unit residential property having a transaction value less than \$1,000,000 and complex one-to-four unit residential property having a transaction value less than \$250,000.

State-licensed real estate appraisers may appraise vacant or unimproved land that is utilized for one-to-four family purposes, and where the highest and best use is for one-to-four family purposes.

State-licensed real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

In addition state-licensed real estate appraisers may appraise properties as specified by the Federal Financial Institution Regulatory Agencies.

(2) State-Certified Residential Real Estate Appraisers. State-certified residential real estate appraisers may appraise residential properties with one-to-four units without regard to transaction value, as well as complex one-to-four unit residential property without regard to transaction value.

State-certified residential real estate appraisers may appraise vacant or unimproved land that is utilized for one-to-four family purposes, and where the highest and best use is for one-to-four family purposes.

State-certified residential real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

In addition, state-certified residential real estate appraisers may appraise properties as specified by the Federal Financial Institution Regulatory Agencies.

(3) State-Certified General Real Estate Appraisers. State-certified general real estate appraisers may appraise all types of real property. Regulatory Authority: 264 CMR 6.00 (promulgated 6/28/96); M.G.L. c. 13, s. 92; M.G.L. c. 112, §. 173-195.

3. **The Appraiser's Contract:** Include the appraisal standards as a condition of the appraiser's contract. Consider withholding final payment to the appraiser until DCS accepts the report.
4. **Common Comparable Sales Problems:** Reports usually contain comparable sales and the examples offered should be just that: comparable. The locations should be similar, preferably the same town. If they are not, the narrative must explain why that particular sale is still comparable. The highest and best use and market situations of the comparable sale should be the same as the subject property. These sales must also represent arms length transactions – generally municipal transactions are not arms length.

5. **Common Valuation Problems:** The highest and best use must reflect a market situation, and typically "open space" or "conservation" is not a marketable situation. If the subject property cannot support development, perhaps it would be attractive to abutters who wish to add to their own holding (assembly) or the property may have some timber value, or if the property is part of a larger parcel, a before and after value should be determined. Any restrictions placed in the deed by the grantor (seller) can possibly lower the value of the property. Special Note: appraisals submitted as part of a conversion proposal must value the converted property as if it were developable, unencumbered by any conservation or recreation restrictions.
6. **Complicated Circumstances:** Appraisals should be analytical narrative reports following current professional appraisal standards. All components of the report such as introductory and supporting data, valuation analysis, limiting conditions, and certifications should meet these standards. If necessary, the Division of Conservation Services will furnish supplementary specifications which delineate additional required data in the appraisal of highly specialized properties or properties to be acquired under unusual circumstances.
7. **Eminent Domain Taking:** Clients should notify the appraiser if eminent domain taking is contemplated or a possibility. All participants must provide for fair and equitable treatment of persons and businesses to be displaced as a result of the Project. Participants must abide by the requirements of M.G.L. c. 79A or c. 80A (both pertain to eminent domain takings), as amended. Titles II and III of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) must be complied with if the participant is seeking concurrent federal financial assistance or if subsequent development stages are contemplated with the use of any federal funds.
8. **Review Appraisal:** Generally, when appraised values are within 10% of one another there will be no need for further appraisal resolution providing both reports are found to be adequate. Appraisers may be asked to reconcile their value differences, however, when the values differ by more than 10%. When, in the opinion of the Director, the value of the property remains in doubt, further appraisals may be required to reach a value conclusion. The resolution of value may be accomplished through the performance of entirely new appraisals or through the engagement of an appraiser as qualified above for the purpose of reviewing existing appraisal reports and certifying a final value conclusion.

APPRAISAL REPORT REQUIREMENTS

I. INTRODUCTION

1. Title Page

- a. Land area of subject property
- b. Street number and town location
- c. Name of property owner(s)
- d. Effective date of appraisal
- e. Name and address of appraisers

2. Table of Contents – List all essential items in the report.

3. Owner's Property Inspection Certificate

The appraiser must invite the landowner or his or her representative to accompany the appraiser during inspection of the property. To allow the landowner time to make the necessary arrangements, the invitation should be made appropriately in advance of the planned inspection date. Reasonable efforts should be made to include the landowner or his or her representative in the inspection. The appraiser should consider any information the landowner may provide which is relevant to the issue of the value of the property inspected. However, the appraiser must use his or her best judgment as to the usefulness of any information provided by the landowner. Include the Certificate stating that the landowner or designated representative has participated or declined to participate in the field inspection of the property in the addenda of the appraisal report. See Certificate form on page 9 of these requirements.

4. Statement of Limiting Conditions

The appraiser should state that he/she assumes the title to be marketable, that he/she assumes no responsibility for legal matters, and that all data furnished by others are presumed correct. The appraiser should also mention any other assumptions he/she has made.

5. Summary of Important Facts and Conclusions

II. FACTUAL DATA

1. Purpose of Appraisal and Definition of Value(s) required, and reason for the appraisal.

2. Identification of the Property

Legal description of the whole tract and that to be acquired. Properly identify the area (plot plan, etc.)

3. Area and Neighborhood Analysis

The appraiser should present all findings and conclusions about the external influences (social and economic) that could affect the value of the subject. The presentation should be analytical and related to the valuation problem at hand. Avoid itemization of facts and figures not pertinent to value. Include: (Items d, e, and f required for appraisals of developable land only).

- a. Description of Community (rural, suburb, resort, etc.)
- b. Ten-year population trend
- c. Reasons for trend, i.e., new industries, outward migration, etc.
- d. Rate of construction activity in town
- e. Number of bona fide building permits issued in past five years, and those pending, for type of development considered for the subject property
- f. How many lots per year could be absorbed?
- g. Utilities available in area
- h. Attitude of town officials toward development
- i. Master Plan for town?
- j. Immediate neighborhood - dominating influences and detrimental factors?

4. Area Map

Must indicate location of subject property as exactly as possible (a state highway map is suggested)

5. Location and Neighborhood Map

Must show roads leading to subject to facilitate inspection by review appraiser (a U.S.G.S. topographic map is suggested)

III. PROPERTY DATA

1. Site Description

- a. Total land area and brief description of improvements
- b. Total acreage under appraisal
- c. Shape of parcel and bordering properties
- d. Total street frontage
- e. Type of land – field, wooded, ledge, marsh, etc.
- f. Brooks, rivers, etc.
- g. Soil description and analysis from U.S.D.A. Soil Survey
- h. Utilities available to site (how far from sewer/water lines)

- l. If no town sewer, will property perc?
 - j. Include perc. test results, if available
 - k. If no town water, will town allow new wells?
 - l. Check possibility of fertilization contamination of wells if land has been farmed
 - m. Easements
 - n. Gravel, loam, timber, etc. – commercial value? A statement must be made concerning the existence or nonexistence of mineral deposits, loam and timber, having a commercial value.
 - o. Site Plan (adequate for eminent domain takings if necessary)
2. Exhibits - May be placed in the body or Addenda of the report at the discretion of the appraiser.
- a. Soil Map
 - b. Topo map on which the boundaries of subject are superimposed
3. Improvements and Conditions
This description may be by narrative or schedule form and must include dimensions, cubic and/or square foot measurements, and where appropriate, a statement of the method of measurement used in determining rental areas such as full floor, multi-tenancy, etc. Site and Improvements Analysis will show the appraiser's findings from inspection of the site and buildings, including an indication of both positive and negative features that influence value. This discussion should set out succinctly the basis for the adjustments and/or deductions made by the appraiser in applying the several alternative analytical approaches to value estimation.
4. Equipment
This must be described by narrative or schedule form and must include all items of equipment and their state of cannibalization. The current physical condition and relative use and obsolescence must be stated for each item or group appraised, and whenever applicable, the repair or replacement required to bring the property to useable condition. Any related possessions or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, must be separately inventoried. Where applicable, these detachable or individually owned items must be separately valued.
5. History
State briefly the purpose for which the improvements were designed, dates of original construction and major renovation and/or additions; include, for privately owned property, a ten-year record for each parcel, of all sales and if possible, offers to buy or sell, and recent lease(s); if no sale took place in the past ten years, include a report of the last sale. The history should include parties to the transaction, dates of transfer, and consideration paid. If the property has been owned by the present owner for more than ten years, the appraiser should so state.
6. Assessment
Current assessed valuation (state if property is under M.G.L. c. 61, 61A or 61B) tax rate and annual tax bill. If the property is not taxed, the appraiser must estimate the assessment and probable taxes if property were placed on the tax rolls.
7. Insurance
Give the estimated rate per thousand and the annual cost of adequate insurance coverage (not necessarily present coverage). Only applicable on income approach.
8. Zoning
- a. Zoning of subject property, including dimensional requirements
 - b. Wetlands if applicable; floodplain regulations, overlay districts; water resource of acquire protection districts.
 - c. Include pertinent section from by-laws, if possible (in Addenda)
 - d. Copy of subdivision control law or excerpts if applicable (in Addenda)
 - e. If property is not zoned, state what the zoning probably would be, and if rezoning is imminent, discuss further.

IV. ANALYSIS AND CONCLUSIONS

- 1. Highest and Best Use
 - a. The report must state the highest and best use that can be made of the property as vacant and with existing improvements and where applicable machinery and equipment for which there is a current market. In the appraisal of vacant land, the terms "highest and best use" and "feasibility" should be synonymous and foremost in the appraiser's thought process.
 - b. Assuming the highest and best use of undeveloped land is for residential subdivision (based on an analysis of all the preceding data), the narrative should be accompanied by a subdivision sketch showing the number of sites the tract would yield. While it need not be prepared with the exactness of a surveyor's plan, the sketch should show an outline of the number of lots which could be subdivided and clearly indicate those areas unsuitable for development because of wetlands, ledge, severe slope, etc.
 - c. A study of the zoning should reveal, and the report should discuss the following information:
 - (1) Are pork chop lots, cluster development, condominiums, etc. allowed?
 - (2) Is zero lot line development permitted?
 - (3) Would a higher lot price for buildable land result if non-buildable land were designated as permanent open space?
 - (4) Would a greater net value result from sales of over-sized lots utilizing only existing street frontage?
 - d. Will the town pay for extension of sewer/water lines to site?

- e. Acceptability of on-site sewer, water facilities.
 - f. Value of gravel or any other minerals or timber having commercial value on site.
 - g. Special requirements of Planning Board and/or Conservation Commission.
 - h. Number of lots that could be sold per year/total sell-off time.
 - i. If the estimate of highest and best use is for a use not permitted under the zoning, the appraiser must demonstrate a reasonable probability for a change in zoning for such use.
2. The Appraisal Process
- a. Standard definitions
 - b. If both Cost of Development Approach and Direct Sales Comparison Approach have not been used, in valuing land, why? If Income, Cost, or Sales Comparison Approaches have not been used in valuing improved property, why?
3. Valuation of Vacant Land Cost of Development Approach
- a. See Highest and Best Use section
 - b. Cost figures should be confirmed with local developers and professionals and, if deemed necessary, and engineering report should be included.
 - c. Local fees and procedures should be checked (e.g., tap-in fees, park-land provisions, etc.)
 - d. Extreme care must be exercised in estimating annual cash flow (Front end costs may make the use of averages inappropriate)
 - e. The discount rate must be supported by the market and equated to the risk involved. The risk rate in land development is generally higher than for income-producing real estate.
 - f. The appraiser must allow for the land developer's profit i.e., return on investment. This may be expressed as a percentage mark-up of original cost or a percentage discount of final selling prices.
 - g. Retail lot prices (by lot type if more than one category) should be supported by a comparable sales table. In valuation assignments relative to small parcels of land or approved building lots, the primary method of appraisal must be the Direct Sales Comparison Approach provided that truly comparable sales can be found. In appraisals of large parcels, it is highly unusual to find truly comparable acreage sales and, therefore, to make meaningful comparisons between acreage sales for such variables as street frontage, topography, development cost, existence of wetlands, etc. Therefore, in appraising large parcels of land with definite development potential, the cost of Development Approach should be relied upon and closely supported by a value range arrived at through use of comparable but somewhat dissimilar acreage sales. The most reliable method of valuing unbuildable land is through use of sales of comparable unbuildable land.
4. Direct Sales Comparison Approach
- a. Comparable sales (lots and acreage) should be summarized including perimeter sketches (include in Addenda)
 - b. A comparable sales map should be included
 - c. Sales should be presented in table form, showing adjustment for time
 - d. Each sale must be discussed in detail in the narrative including such factors as:
 - (1) time
 - (2) location (desirability, view, etc.)
 - (3) zoning
 - (4) frontage
 - (5) topography (including soil type)
 - (6) utilities
 - (7) cost of extending or installing utilities
 - (8) financing (mortgage back, etc.)
 - (9) contingency sale based on future development of individual lots
 - e. Sales from neighboring towns may be used if necessary, providing adjustments are made for market characteristics, etc.
5. Valuation Improved Properties
- a. Cost Approach: This approach must include calculations of reproduction or replacement cost of the improvement(s) and state the source, (book and page or computer printout, if a national cost service), of all figures used. The dollar amounts of physical depreciation and functional and economic obsolescence or the omission of same must be explained in narrative form. Depreciated costs new of improvements should then be added to a land value, supported by adjusted comparable land sales, and an appropriate developer's profit to indicate the value of the appraised property.
 - b. Income Approach: This approach must include adequate market data to support each of the costs, rents, and capitalization or discount rates used, and must be arranged in detailed form to show at least 1) estimated gross rent or income; 2) allowance for vacancy and collection loss; 3) an itemized estimate of total expenses, 4) net operating income. N.O.I. must be capitalized at an appropriate overall rate (with market support) into an indicated market value. Investment properties may (also) require a Discounted Cash Flow Analysis, reflective of the requirements of investment/buyers in the current market.

c. Direct Sales Comparison Approach: All comparable sales used must be confirmed by the buyer, seller, broker, or other party having knowledge of the price, terms, and conditions of sale. Each comparable must be explained and adjusted in relation to the subject property to indicate the reasoning behind the appraiser's value estimate as indicated by this approach. Adjustments for time, location, size, age and condition and terms of sale and financing, should be included as well as the conditions of each sale. Photographs of comparable sales are required.

V. VALUE SUMMARY – VACANT LAND VALUATIONS

1. The estimate of value arrived at by means of the Development Approach should be compared on a per acre basis with the value arrived at by the Direct Sales Comparison Approach.
2. If the values do not closely agree, the reason for the divergence should be explained fully.

VI. CORRELATION AND FINAL VALUE ESTIMATE – IMPROVED PROPERTY VALUATION

The appraiser must interpret the values indicated by each approach, and must state his reasons why one or more of the conclusions reached are indicative of the market value of the property.

1. Less than Fee Acquisitions

Where the appraisal is for determination of the value of less than fee interests in land (e.g. conservation restrictions or easements), the appraiser must determine the value of this interest by use of the before and after method. The appraiser must fully detail the analysis of the highest and best use of the subject property without the restriction or easement, and clearly explain any changes in the highest and best use after imposition of the restriction or easement.

2. Severance Damages

If the property being appraised is a partial acquisition or taking, or is a separate parcel but physically contiguous to other land of the owner, or is under the same ownership but physically non-contiguous to the other land of the owner (but which may add value to the non-contiguous parcel, e.g., by providing access to a body of water), severance damages must be fully described and discussed. The method of value estimation must be the before and after method. The amount of the severance damages must be determined mathematically as well as described in narrative form.

3. Enhancement

The appraiser must investigate and determine whether the acquisition will enhance the value of the remaining property of the owner. If so, the method of value estimation must be the before and after method. The Report must set forth the enhancement value separately, with a full discussion and analysis of the factors giving rise to the enhancement.

VII. CERTIFICATION OF APPRAISER

1. He/she has personally inspected the property.
2. He/she has no present or contemplated interest in the property.
3. Appraiser's opinion of the market value of the property giving the date of the valuation, the amount of the valuation, the appraiser's signature, and the date the appraisal report was submitted.

VIII. REQUIRED EXHIBITS IN REPORT OF ADDENDA

(Any or all items may be placed in the body of the report at the discretion of the appraiser.)

1. Comparative sale data map – showing location of comparable sales used in appraisal.
2. Location map – showing locus of the subject property and neighborhood and area involved.
3. Plot plan and/or floor plan if appropriate – These plans can help the viewer visualize the written description of the subject property and both positive and negative features. Wetlands and flood plain maps if appropriate.
4. Adjustment chart or graph – showing comparable sales adjusted to the subject by those factors of comparability.
5. Photographs – Pictures must show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplications, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as the page facing the discussion or description that the photographs concern. All graphic material must include captions.
6. Owner's property inspection certificate.
7. Appraiser's qualifications.

Sources And References

These appraisal specifications are based on material from the following sources:

1. Appraisal Specifications of the U.S. Government
2. Appraisal Specifications of the Commonwealth of Massachusetts Department of Agriculture's APR Program.
3. The Internal Revenue Service Tax Appraisal Regulations as published in the Federal Register, December 31, 1984.
4. EOEALand Acquisition Policy – Appraisals dated September 1, 1995.
5. Uniform Standards of Professional Appraisal Practice, 1993.

OWNER'S PROPERTY INSPECTION CERTIFICATE

1. _____ () _____
Name(s) of Supposed Owner(s) Telephone Number with Area Code

Address

Town/City State Area Code

2. Please check appropriate line

_____ I wish to accompany the appraiser on an inspection of my property.

_____ I wish to have my representative accompany the appraiser(s) on an inspection of my property. (Please fill in Item 3.)

_____ I do not wish to accompany the appraiser(s) on an inspection of my property.

3. _____ () _____
Name of Authorized Representative Telephone Number with Area Code

Address

Town/City State Area Code

4. The following individuals and/or entities occupy the premises in accordance with an agreement as indicated (lease, life estate, etc.):

a. _____ b. _____
Name of Individual or Entity Name of Individual or Entity

Occupied Premises Occupied Premises

Type of Agreement Type of Agreement

5. I certify that I have given the above-referenced tenants or occupants notice of the appraiser's inspection of the property.

Name(s) of Supposed Owner(s)

6. I hereby authorize the appraiser to enter and inspect the property, after reasonable notice, for the purposes of preparing an appraisal.

Owner's Signature Date

301 CMR 5.00: SELF-HELP AND URBAN SELF-HELP PROGRAMS

Section

- 5.01: Authority
- 5.02: Purpose
- 5.03: Definitions
- 5.04: Eligibility
- 5.05: Project Application and Selection
- 5.06: Project Conditions
- 5.07: Project Costs
- 5.08: Post-Completion Responsibilities
- 5.09: Conversion
- 5.10: Guidance Documents
- 5.11: Severability

5.01: Authority

301 CMR 5.00 is promulgated pursuant to M.G.L. c. 21A, § 2, M.G.L. c. 132A, § 11, as amended, St. 1977, c. 933, as amended, and St. 1996, c. 15.

5.02: Purpose

301 CMR 5.00 is promulgated to implement the Self-Help and Urban Self-Help grant programs by establishing uniform grant application, selection procedures and program requirements. Both the Self Help and Urban Self Help grant programs have two separate programs: an annual program in accordance with the grant cycle of 301 CMR 5.05(4); and a rolling program subject to periodic notice of availability as described in 301 CMR 5.05(5).

5.03: Definitions

Division means the Division of Conservation Services in the Executive Office of Environmental Affairs.

Extreme Critical Need means a state of financial hardship where a municipality has an unemployment rate exceeding 10% or where a major business or facility closing has caused devastating economic dislocation and a substantial decrease in the municipality's tax base.

Major State Public Institution means an institution including, but not limited to state and county prisons, mental health facilities, regional solid waste facilities, and federal and state military reservations. Institutions of public higher learning are excluded.

Open Space and Recreation Plan means a bound document containing the following: a summary; statement of purpose including planning process and public participation; community setting; environmental inventory and analysis; inventory of lands of conservation and recreation interest; community goals; analysis of needs; goals and objectives and five-year action plan; maps and letters of comment from the chief municipal officer; planning board and regional planning agency. Guidelines and a workbook for developing plans are available from the Division.

Particular Environmental Sensitivity means Projects located within a state-designated Area of Critical Environmental Concern ("ACEC"); or containing significant plant or animal habitat, a vernal pool, or endangered, threatened or special concern plant or animal species as certified by the Massachusetts Natural Heritage Program office; or, containing known, important archeological or historic resources and on or eligible for inclusion in the State Register of Historic Places. Particular Recreational Importance means, but is not limited to, a project that is the "flagship" or centerpiece of a community's park and recreation system; an acquisition project that significantly addresses an imbalance between the available recreation acreage per capita and the National Recreation and Park Association Standards for such acreage; a coastal or inland swimming facility; and unique recreational facilities such as zoos.

Project means the acquisition, planning, or design of conservation land reimbursed by the Self-Help Program, or the acquisition, development or renovation of parkland reimbursed by the Urban Self-Help Program.

Project Selection System means a project rating system based on a 100-point scale. The Self-Help Project Selection System awards 50 points based on demographic factors of the applicant community and 50 points based on project quality. The Urban Self-Help Project Selection System awards 40 points based on demographic characteristics of the applicant community and 60 points based on project quality. Each program's selection system awards six points for implementation of the community's open space plan and up to ten bonus points if the applicant community has or plans to site a major state public institution or has passed a debt limit override vote of open space purchases in the preceding two years.

Projects of Particular Environmental Sensitivity may be eligible for points in the rating system, and possibly an increase in the reimbursement rate. Applicants claiming eligibility for additional reimbursement for projects of Particular Environmental Sensitivity must include written comments from any of the following state agencies, as applicable: Coastal Zone Management, the Department of Conservation and Recreation's ACEC program, the Massachusetts Natural Heritage and Endangered Species Program, or the

Massachusetts Historical Commission. The Secretary shall develop and may review and modify, at the Secretary's discretion, selection systems for the Self-Help, Rolling Self-Help, Urban Self-Help, and Rolling Urban Self-Help grant programs. The selection systems shall be set forth in Guidance Documents available from the Division.

Regional Project is a recreation facility that serves a population of at least 35,000 people who reside within a 25-mile radius of the facility, has parking for at least 100 cars and adequate comfort stations. Regional Projects generally provide multiple opportunities for picnicking, walking, canoeing, boating, fishing, children's recreation, and swimming. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for regional projects are available from the Division.

Rolling Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Rolling Urban Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Urban Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Secretary means the Secretary of Environmental Affairs or the Secretary's designee.

Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of the allowable costs towards the purchase of land for conservation and passive recreation purposes.

Special Advisor for Environmental Justice Issues means a person so named and designated by the Secretary to review Urban Self-Help grant applications and advise the Secretary on the importance of each application in addressing environmental justice concerns.

Small Town Project is a Project which qualifies only for a maximum of \$50,000 where a community does not meet the population criteria of a city or town of over 35,000 and is not undertaking a Regional or Statewide Project.

Statewide Project is a recreation facility located within a one hour driving time from more than one Metropolitan Statistical Area, accommodates at least 200 vehicles, provides adequate comfort stations, and will also provide for more dispersed or uncommon recreation opportunities such as equestrian trail use, overnight camping, nature center programs, golf, group picnicking, large beach use, boating, skiing, and live animal viewing such as zoos. Any Project located on Nantucket Island, Martha's Vineyard, and the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham is considered statewide regardless of the project scope. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for statewide projects are available from the Division.

Urban Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

5.04: Eligibility

(1) Planning Requirement. No application will be considered by the Secretary until the Applicant has filed an approved Open Space and Recreation Plan or submits a draft plan with the preliminary application. If a municipality's plan has not been approved by the Secretary at the time of the project selection process, there will be no rating points awarded for plan implementation under the Project Selection System.

(2) Self-Help Program.

(a) Only municipalities with Conservation Commissions duly established pursuant to M.G.L. c. 40, § 8C are eligible to participate in the Self-Help Program.

(b) Self-Help Program grants are available to fund the acquisition of land for conservation purposes, and to plan or design suitable public outdoor facilities for these properties.

(3) Urban Self-Help Program.

(a) Only municipalities with a park, playground, or recreation commission, or any combination thereof, duly established pursuant to M.G.L. c. 45, § 2, and a Conservation Commission duly established pursuant to M.G.L. c. 40, § 8C, are eligible to participate in the Urban Self-Help Program.

(b) Urban Self-Help Program grants are available to fund the acquisition of land for park and outdoor recreation purposes, and for the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

(c) The following municipalities are eligible to apply for Urban Self-Help grants:

1. Any city or a town of over 35,000 year round inhabitants; or

2. Municipalities with a population of less than 35,000 year-round inhabitants that:

a. propose Statewide or Regional Projects and demonstrate regional or statewide usage to the satisfaction of the Secretary; or

b. propose a Small Town Project.

(d) The Special Advisor for Environmental Justice Issues shall publicize in urban areas the existence of the Urban Self-Help Program, and publicize, make available and assist municipalities with interpreting the Urban Self-Help Program guidelines.

(4) Affirmative Action and Accessibility. To be eligible for assistance, municipalities must be in compliance with a Civil Rights Review Comment from the Massachusetts Commission Against Discrimination, and Executive Order No. 215, concerning Disbursement of State Development Assistance for Affordable Housing. Municipalities must also show that all parks and recreation facilities are in compliance

with the Americans with Disabilities Act (P.L. 101-336), formerly required under Section 504 of the Rehabilitation Act of 1973, P.L. 93-112 (Federal Handicapped Accessibility Guidelines), as amended; and Department of Interior Regulations 43 CFR 17, Subpart B, or show how and when such facilities will be brought into compliance with the above regulations.

(5) Extreme Critical Need. When a municipality can demonstrate that it has extreme critical need or that its project is one of particular recreational importance as defined in 301 CMR 5.03, it may receive up to 10% more reimbursement of the total project cost. No more than five municipalities per year will be awarded this additional funding.

(6) Upon request, the municipality or its authorized representative shall provide all records, books, papers, documents, or other data relating to the Program grant to the Secretary for examination.

(7) Each program participant shall cause work on the Project to proceed within a reasonable period of time after receipt of notification from the Division that funds have been approved and will pursue the Project to completion with reasonable diligence.

5.05: Project Application and Selection

(1) Application Step Procedures. Applications shall be submitted to the Secretary in accordance with the Application Guidelines of the Division, which are available upon request.

(2) Appraisal Reports. Applications for acquisition assistance shall be accompanied by an appraisal report prepared according to the Appraisal Report Guidelines of the Division, which are available upon request.

(3) Project Selection System. In order to distribute limited Self-Help and Urban Self-Help funds among an overwhelming number of applicants, the Secretary has developed a review process called the Project Selection System. The Project Selection System considers a number of demographic, social, environmental, and project quality factors in order to identify those projects which best protect natural resources or recreation amenities where appropriate in communities that have the greatest need for financial assistance and that have made efforts to implement their open space plans in coordination with local planning for future growth. The Project Selection System Guidelines for each grant program are available upon request from the Division.

(4) Self-Help Program and Urban Self-Help Program Grant Cycle.

The annual filing deadline for applications shall be June 1 of each year. The Secretary may alter or extend this deadline provided that public notice of the change is given at least 90 days in advance of the new deadline. Grants shall be made only once in the annual fiscal cycle; however, grants may be adjusted after the award for cause.

(5) Rolling Program Specific Requirements

- (a) Rolling Self-Help Program grants must meet all requirements applicable to the Self-Help grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).
- (b) Rolling Urban Self-Help Program grants must meet the all requirements applicable to the Urban Self-Help grant program, excluding the grant cycle requirement as described in 301CMR 5.05(4).
- (c) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Self-Help Program.
- (d) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Urban Self-Help Program.
- (e) The Secretary shall provide notice of availability of funding and the associated filing deadline for any grant funding offered under either the Rolling Urban Self-Help or the Rolling Self-Help Programs. Such notice shall be effective when published either in the Massachusetts Register or the Environmental Monitor.
- (f) The Secretary may announce rolling grant rounds and accept applications from time to time and subject to available funding.

5.06: Project Conditions

(1) Off-street parking and land use and management plans may be required at the discretion of the Secretary depending upon the size of the project area, its intended use(s), the nature of the resource(s), and the availability of public transportation and on-site parking.

(2) Additional project conditions may be required by the Secretary to enhance public benefit or protection of natural resources.

(3) Program participants shall provide for fair and equitable treatment of persons and businesses to be displaced as a result of the project, and shall comply with M.G.L. c. 79A, as amended, Titles II and III of the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) where concurrent federal financial assistance is sought or intended for subsequent project phases.

(4) Property acquired or improved with Self-Help Program assistance shall be under the care, custody, and control of the Conservation Commission. Property acquired or improved with Urban Self-Help Program assistance shall be under the care, custody, and control of either the Conservation Commission or the Recreation Commission.

(5) A failure to comply with the conditions of any grant contract may result in the reduction, suspension, or withdrawal of awarded grant funds.

5.07: Project Costs

(1) Each grant program provides reimbursement of up to 90% of allowable costs towards the acquisition of land, and the construction,

restoration or rehabilitation of land for park and outdoor recreation proposes. The maximum reimbursement percentage allowed for an approved project based on the municipality's equalized valuation per capita decile rank among all Massachusetts municipalities as determined by the Secretary of Administration and Finance. A municipality's rank, and therefore its percentage of reimbursement potential, may change annually based on its increase or decrease in property valuation and population growth. The Secretary may reduce the maximum reimbursement percentage to allow for a more equitable distribution of limited funds among all municipalities. The annual reimbursement schedules are available from the Division.

(2) Subject to the approval of the Secretary, all reasonable costs associated with acquisition projects shall be eligible for reimbursement. Costs for appraisals, title searches, recording fees, surveys, costs associated with 301 CMR 5.06(3), as well as the actual approved purchase price are deemed to be eligible acquisition project costs. In addition, for Urban Self-Help Projects, the actual approved purchase price, engineering, design, construction, and construction supervision are deemed eligible project costs, however, the Secretary shall retain the right to set a fixed limit on the reimbursement of Project costs. Additional information on reimbursement procedures is available from the Division upon request.

(3) As required by M.G.L. c. 132A, § 11, reimbursement under the Self-Help Program will occur only after the participant has expended an amount equal to the total cost of the project and not until the project has been completed to the satisfaction of the Secretary. Billing procedures and forms are available from the Division.

(4) Federal funding sources such as Community Development Block Grants or Revenue Sharing that are defined by the federal government to be local money may be used to match program funds. Program reimbursements for Urban Self-Help projects may be paid periodically upon request for payments made by a municipality. Billing procedures and forms are available from the Division.

(5) The Division encourages charitable contributions for conservation purposes either in cash or real property. While real property contributions are not reimbursable, cash contributions may be utilized as the municipality's share of the project providing said cash contribution is deposited into a separate municipal account such as authorized under M.G.L. c. 40, § 5, Cl. 51 and is expended therefrom as part of the municipal appropriation for the acquisition or development. Cash contributions returned to the municipality after acquisition are also encouraged. If such contribution is prearranged or likely to occur, the appraisal process should be closely scrutinized, to avoid even the appearance of impropriety. Participants and potential donors should carefully familiarize themselves with M.G.L. c. 268A, the Conflict of Interest law. Donors must not exert undue influence in selling their property and it must be sold at a fair price in order to avoid a conflict of interest.

5.08: Post-completion Requirement

(1) Operation, Maintenance, and Reasonable Use Limitations. Property acquired or developed with Program assistance shall be operated and maintained in accordance with standards and guidelines of the Division. In accordance with the applicable program contract, participants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Program assistance as necessary for maintenance or preservation.

(2) Nondiscrimination. Property acquired or developed with Program assistance will be open to entry and use by all persons who are otherwise eligible regardless of race, color, national origin, sex, sexual preference, age or disability.

(3) Nondiscrimination on the Basis of Residence.

(a) Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, or user fees is prohibited on the Project site unless this provision is waived by the Secretary.

(b) The Secretary will approve or deny all proposed fee or access limiting systems. Waivers will not be granted which are inconsistent with the Federal Land and Water Conservation Fund Act, P.L. 88-578, Section 6(f)(8), 16 U.S.C. § 4601-4. *et seq.*

5.09: Conversion and Reversion

(1) Conversion. Property acquired or developed with assistance from the Self-Help or Urban Self-Help Program shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, and St. 1977, c. 933. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation or conservation purposes without the approval of the Secretary. Converted property shall comply with Article 97 of the Massachusetts Constitution and shall be replaced with land of at least equal fair market value and of reasonably equivalent usefulness. The Secretary may disapprove conversion requests or reject proposed property substitutions. Grant contracts, at the discretion of the Secretary, may be subject to specific performance.

(2) Reversion. Property acquired or improved with Program funds authorized by St. 1996, c. 15 shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, as amended, or St. 1977, c. 933, as amended. In the event that the property ceases to be used, either in whole or in part, for such purposes, all interest in the property shall revert to the Commonwealth, unless the Secretary demands specific performance of the grant contract.

(a) Owners of property so acquired or improved shall notify the Secretary in writing of any change in use or potential change in use of the property that is inconsistent with said open space purposes. The owner shall have 90 days from the date written notice was received by the Secretary to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Secretary may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public open space, and find that the provisions of 301 CMR 5.09(1) shall apply.

(b) If the Secretary finds that a property acquired or improved with Program funds has ceased to be used for such open space

purposes, the Secretary shall notify the owner of the property in writing of this basis. The owner shall have 90 days from the date written notice was mailed to the owner to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert.

5.10: Guidance Documents

The Guidelines or Guidance Documents referenced herein are available free of charge to municipalities upon request from the Division.

5.11: Severability

The provisions of 301 CMR 5.00 are severable, and if any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 5.00.

REGULATORY AUTHORITY

301 CMR 5.00: M.G.L. c. 21A, § 2; c. 132A, § 11; St. 1977, c. 933; St. 1987, c. 564, §§ 8 and 9; St. 1996, c. 15, § 2.

Formatting Note: 301 CMR 5.00 occupies pages 15 through 22 of 301 CMR EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS. (PAGES 23 THROUGH 42 ARE RESERVED FOR FUTURE USE.)